ANNUAL REPORT 2013/14

COMMISSIONER FOR

TEACHER

REGULATION

BRITISH COLUMBIA
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October 2, 2014

The Honourable Peter Fassbender
Minister of Education
Room 310, Parliament Buildings
Victoria, BC V8W 9E2

Dear Minister Fassbender:

It is my honour to present to you the 2013-2014 Annual Report for the Office of the Commissioner for Teacher Regulation. This report covers the period from July 1, 2013 to June 30, 2014.

This report has been prepared and submitted in accordance with section 5 of the *Teachers Act*.

Sincerely,

Honourable Bruce Preston
Commissioner for Teacher Regulation

British Columbia
Commissioner
for Teacher Regulation

Office of the
Commissioner

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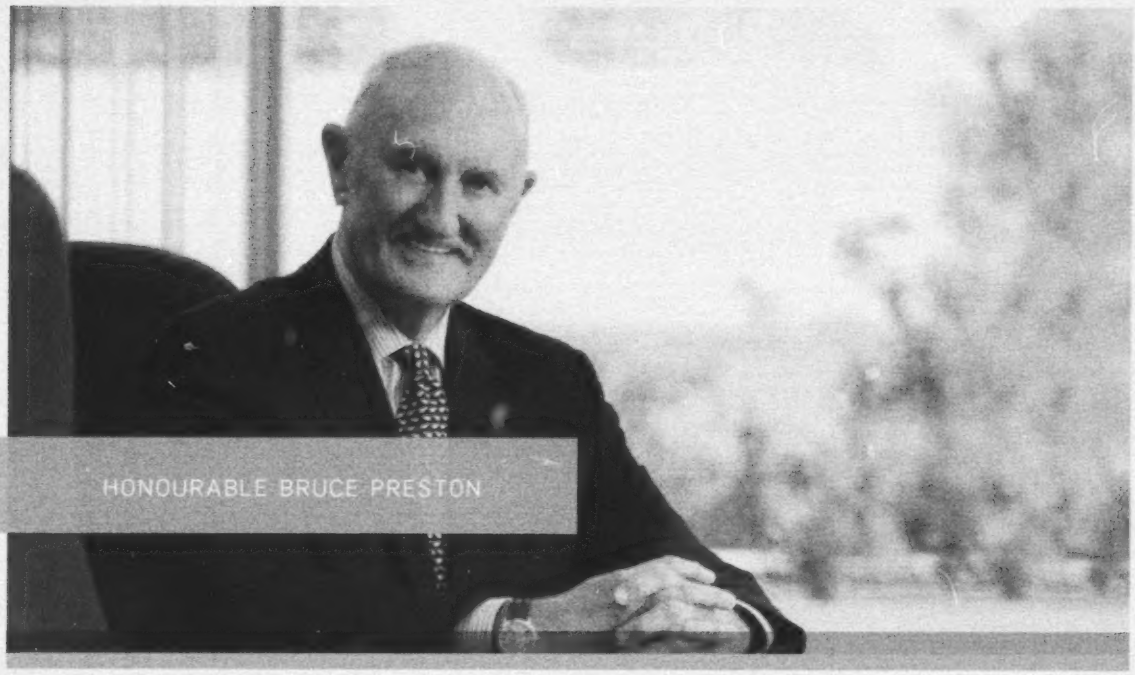


HONOURABLE BRUCE PRESTON

COMMISSIONER'S MESSAGE

We are now two and one-half years into our experience with the *Teachers Act* which came into force January 9, 2012. I have been Commissioner under that *Act* since November 12, 2012. In my annual message last year, I indicated that my primary goal in restructuring the practices and procedures of the Professional Conduct Unit of the Teacher Regulation Branch, the Unit that supports my work, was to reduce the inordinate delay that characterized the complaint and reporting, investigation, consent resolution and hearing processes that deal with teacher conduct and competence.

Substantial progress had been made in reducing delay and increasing efficiency. I have been successful in reducing the delay involved in the intake function of my office by modifying the processes involved and by staffing changes. Additionally, delay in the consent resolution process has been accomplished by staffing changes, process changes and the assistance provided by Ministry of Justice staff assigned to me to provide legal services. However, delay in investigations has proved to be more intractable.

The mandate of my office is to deal with complaints and reports relating to teacher conduct and competence fairly, expeditiously and transparently. The job is demand driven. I must, by statute, respond to the volume of complaints and reports. I do this by reviewing every complaint and report personally. On the basis of that preliminary review, I dismiss matters that should not attract disciplinary consequences and send the remaining matters on to be investigated, resolved by consent resolution agreement or sent to a panel for hearing.

The volume of complaints and reports dictates the staff resources that must be devoted to the myriad individual tasks involved. If the resources available to perform these functions are inadequate, the process clogs and results in unacceptable delay.

Between January 9, 2012 and December 31, 2013 the volume of reports and complaints increased significantly. The most concerning increase is in the volume of complaints. Reports from school districts also increased significantly during this period.

I attribute the increase in the volume of complaints to an increased awareness on the part of the public concerning reporting processes contained in the *Teachers Act* due to the transparency mandated by the *Act*. Public reporting of the results of complaints and reports about teachers on the Teacher Regulation Branch website has attracted significant public attention. Complaints from the public generate much more investigative work than reports from school districts. Typically, a report comes to us with the results of an investigation already performed by the school district including witness statements and relevant documents. Complaints from members of the public con ist of allegations on a complaint form, sometimes accompanied by voluminous documentation. Those complaints usually require an investigation in order to bring them to a conclusion.

During much of the 2013-2014 school year, two administrative support positions on my staff in the Professional Conduct Unit had been left unfilled because of Ministry of Education restrictions on filling positions that become vacant. This significantly reduced the Unit's effectiveness in managing the investigative load.

The combination of a reduction in resources and the increase in the flow of complaints and reports has led to an increased backlog of files in investigation. Because we have streamlined our investigative processes as much as we are able, the result is an increasing delay between receipt of a complaint or report and its disposition. Inordinate delay erodes the fairness of the process.

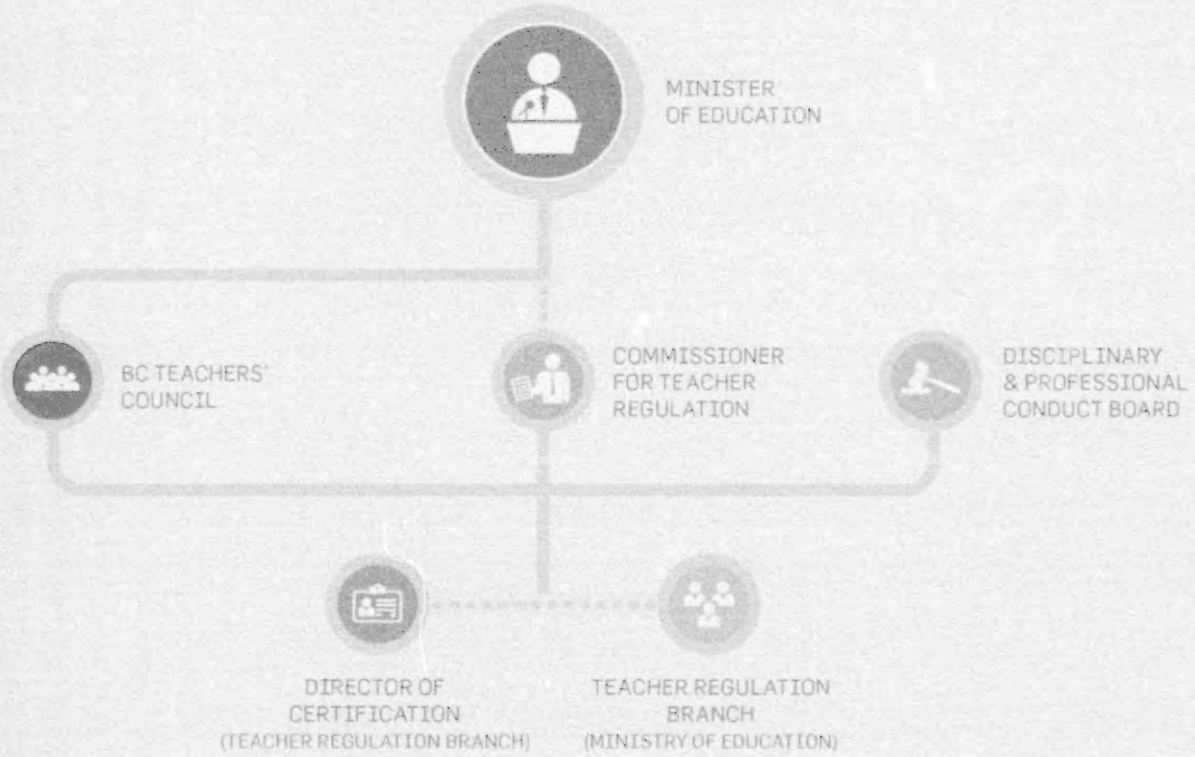
I recently brought this issue to the attention of the Minister and received his full support in increasing the staffing level in the investigation area. Three new investigation positions have been created and the two vacant administrative positions will be filled. I am satisfied that the resources directed to supporting my role are now sufficient to allow me to reduce the delay in the investigation process over the coming year.

I would like to acknowledge my superb staff both from the Ministry of Education and from the Ministry of Justice and thank them for the dedication and competence that they bring to the work of the Professional Conduct Unit. They imbue every day with a sense of accomplishment and satisfaction.

I look forward to a successful 2014-2015 school year and to continuing to focus on efficiently accomplishing the tasks associated with my mandate under the *Teachers Act*.

THE REGULATORY STRUCTURE

The regulatory structure, administered by the Teacher Regulation Branch of the Ministry of Education, consists of five separate and distinct bodies, each of which plays a unique role under the *Teachers Act*.


MINISTER OF EDUCATION
BC TEACHERS' COUNCIL
COMMISSIONER FOR TEACHER REGULATION
DISCIPLINARY & PROFESSIONAL CONDUCT BOARD
DIRECTOR OF CERTIFICATION (TEACHER REGULATION BRANCH)
TEACHER REGULATION BRANCH (MINISTRY OF EDUCATION)

COMMISSIONER FOR TEACHER REGULATION

Receives reports and complaints regarding teacher conduct and competence.

Oversees all disciplinary processes.

Conducts preliminary reviews of certification appeals.

Appoints three member hearing panels to consider evidence and submissions at a disciplinary hearing.

BC TEACHERS' COUNCIL

Comprised of 15 members who have been elected or appointed, and one non-voting Ministry of Education representative, for a total of 16 members.

The Council establishes standards for the conduct and competence of applicants, sets standards for the education of applicants for certification, establishes teacher education program approval standards, and determines if teacher education programs meet these standards.

DISCIPLINARY AND PROFESSIONAL CONDUCT BOARD

Consists of nine Council members appointed by the Minister. The Commissioner draws from the group to serve on three-member hearing panels.

The Commissioner may also appoint non-Board members from a nine person pool of lay people with legal and/or regulatory experience to serve on hearing panels.

DIRECTOR OF CERTIFICATION

Issues, suspends and cancels Certificates of Qualification and Letters of Permission.

Maintains the Online Registry of certificate holders, their certificate status, and any disciplinary action, if such a record exists. This list is publicly accessible on the Teacher Regulation Branch website.

Ministry of Education staff member.

TEACHER REGULATION BRANCH

Serves as the operational arm of the regulatory structure providing administrative support to the various regulatory bodies listed here.

Administers the certification and disciplinary processes for teachers in the kindergarten to grade 12 public and independent school systems.

Part of the Ministry of Education.

THE DISCIPLINARY PROCESS

The Commissioner ensures that concerns about the competence and conduct of teachers are addressed independently, fairly, transparently, in a timely manner, and in the public interest.

The term "teacher," as used in this report, refers to an individual who holds a Certificate of Qualification, a Letter of Permission or an Independent School Teaching Certificate. "Teacher" includes superintendents, principals, vice-principals, directors, and classroom teachers.

The disciplinary process begins when I receive a report or complaint of teacher misconduct or incompetence. The process may also be initiated if I decide that an investigation into the conduct or competence of a teacher is necessary upon becoming aware of a possible breach of the Standards for Educators in BC through avenues such as a media report, a self-report from a teacher, or a notification from the Ministry of Justice.

[INTAKE PROCESS]

The *School Act* and the *Independent School Act* require that a school board or an independent school principal notify my office when a teacher is suspended, disciplined or dismissed. The Acts also require reporting in other situations by superintendents, boards and principals. Those reports trigger the disciplinary process. The process may also be triggered when a member of the public makes a complaint about the holder of a teaching certificate. Reports and complaints are handled administratively by intake officers on my staff in the Professional Conduct Unit. Intake officers deal with school boards, superintendents, principals or members of the public initiating a complaint or report to ensure that all necessary information is available to allow me to conduct a preliminary review of the report or complaint.

[PRELIMINARY REVIEW]

On a preliminary review, I review the material accompanying the complaint or report with members of my staff. The *Teachers Act* provides that I must consider whether the matter is within my jurisdiction (i.e. properly relates to behaviour of a holder or past holder of a BC teaching certificate); is frivolous or vexatious or made in bad faith; whether there is a reasonable prospect that a panel will make an adverse finding; whether it is in the public interest to take further action; and whether the complaint or report has been made in a timely manner. The *Act* provides that I may decide to take no further action if any of those considerations dictate that I should not proceed further. Twenty-six percent of complaints and reports were dismissed at this stage during the 2013-2014 school year.

Matters that are not dismissed at this stage may proceed to investigation if further information is required for the matter to be dealt with by consent resolution or hearing. Some matters may be deferred. Other matters may be ready to proceed directly to the consent resolution process.

[DEFERRAL]

In some cases, the matter may be deferred to await the conclusion of another process such as the court process in criminal matters or a medical or treatment process when alcohol, drug dependency or psychiatric disorders are involved in the behaviour that gave rise to the complaint or report. Once the other process is complete, or has provided sufficient information to allow me to carry on the disciplinary process, the matter may be referred to investigation, or consent resolution.

[INVESTIGATION]

The object of an investigation and the resulting investigative report is to determine and record the facts of the matter – not to make recommendations with regard to a resolution. The resulting investigation report is commonly provided to the teacher for comment. This provides an opportunity for the teacher to point out factual errors or to provide explanation for facts contained in the report. This may trigger further investigation. At the end of the investigation process, the matter is brought back to me for further review in conference with my staff and lawyers from the Ministry of Justice assigned to assist me. In the 2013-2014 school year, 59 of 111 investigations were concluded at this stage by a decision to take no further action (53%). Matters not resolved at this stage are moved to the consent resolution process.

[CONSENT RESOLUTION]

The *Teachers Act* provides for a process of consent resolution as an alternative to a hearing before a panel. Most cases in which disciplinary action proceeds after a preliminary review, either before or after an investigation, are resolved by consent resolution. Very few cases go on to hearing before a panel. I may offer or accept a consent resolution agreement at any time after a preliminary review and before a hearing. The process of consent resolution usually begins when I provide a draft consent resolution to the teacher or his or her counsel. The draft consent resolution is drawn up in accordance with the *Act* which requires that it contain:

- the terms agreed upon by both the Commissioner and the teacher;
- one or more admissions of professional misconduct or incompetence related to a report, complaint or a commissioner-initiated investigation; and
- the discipline consequences (e.g. reprimand, suspension or cancellation of a certificate).

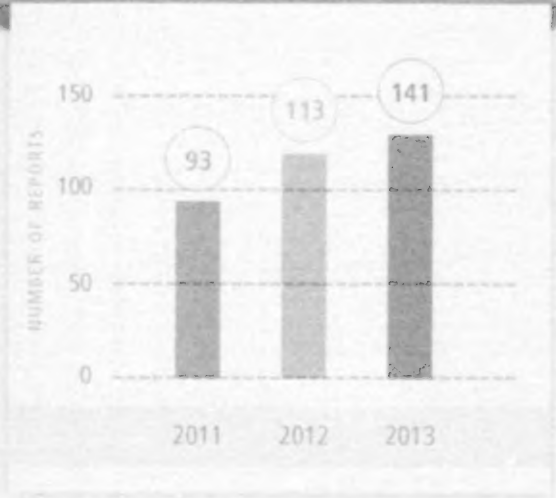
In order to encourage the prompt resolution of conduct and competence matters, detailed consent resolution terms are proposed with a time limit before a citation will be issued, publicly announced, and scheduled for a hearing before a panel. However, it is still possible to conclude a matter by consent resolution during the time the matter is proceeding to hearing.

YEAR IN REVIEW

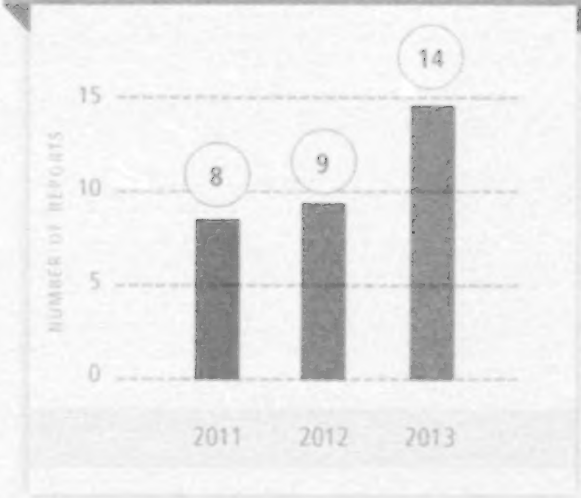
The number of reports received from school boards and complaints received from members of the public has increased substantially since the *Teachers Act* came into effect on January 9, 2012. To place these statistics in context one must keep in mind that there are 69,600 holders of public and independent school teaching certificates in British Columbia. There are approximately 559,000 students in public schools in BC and approximately 76,000 students in the 349 independent schools in BC.

REPORT: a written report to the Commissioner from a Board of Education, Independent School Authority or certified teacher regarding a teacher who has been suspended, dismissed, disciplined for misconduct that involves physical harm to a student, sexual abuse or sexual exploitation of a student, significant emotional harm to a student, or is believed to have breached the Standards.

REPORTS ON PUBLIC SCHOOL TEACHERS



REPORTS ON INDEPENDENT SCHOOL TEACHERS



[DISCIPLINARY OUTCOMES]

The *Teachers Act* outlines the type of sanctions that may be imposed on a teacher who has been found guilty, at the regulatory level, of breaching the Standards. The sanctions vary depending on the severity of the breach and may include:

- a reprimand;
- suspension of a teaching certificate for a fixed period, until certain conditions are met, or until an individual shows he/she is capable of teaching;
- cancellation of a teaching certificate;
- a ban on issuance of a teaching certificate for a fixed or indeterminate period of time; or
- placement of limitations and conditions on a certificate.

The most commonly imposed sanction in the 2013-2014 school year was a reprimand recorded against a teacher's certificate. The number of suspensions imposed decreased slightly compared to last year, while there was a small increase in the number of bans on issuance imposed. These bans are imposed when the teacher no longer holds a teaching certificate at the time that the consent resolution is signed. The least common sanction continues to be the cancellation of a teaching certificate.

DISCIPLINARY SANCTIONS
[2013 -2014 SCHOOL YEAR]

REDUCING DELAY IN THE DISCIPLINARY PROCESS

[INTAKE]

The intake function in the Professional Conduct Unit is an extremely important one as this is the initial point of contact between the public and the Office of the Commissioner. Intake officers deal with members of the public when they contact the Teacher Regulation Branch to complain about teacher misconduct or incompetence. Intake officers assist by ensuring that the person who wishes to formally lodge a complaint appreciates the necessity of specifying as accurately as possible the nature of the complaint. They insure that complainants provide the necessary detail to permit a preliminary review of the complaint and to enable a proper investigation to take place if necessary. Intake officers follow up with each complainant by sending a letter setting out our understanding of the precise nature of the complaint to ensure that no miscommunication has taken place.

The intake officers are the point of contact for school boards and superintendents. They assist them with the reporting obligations contained in the *Teachers Act* and are instrumental in seeking out and assembling the documentary information required to conduct a preliminary review. This may be a time-consuming process if the documentary information is extensive.

In the past, delay in the intake process was one of the major contributing factors to overall delay in the disciplinary process.

Delay in intake has declined significantly since the reorganization of the intake process in early 2013. The median delay has fallen from four months in 2012 to one month in 2014.

[CONSENT RESOLUTION]

The consent resolution process involves considerable back-and-forth contact with teachers and their counsel. The *Teachers Act* sets out the requirements of a consent resolution agreement including the requirement that the details of the conduct admitted by the teacher be set out in the agreement. Frequently there is disagreement over details of the wording used to capture the conduct. This may initiate further investigation to determine the exact nature of one or more of the instances of misconduct or incompetence. In addition, the nature of the penalty sought by the Commissioner may be the subject of negotiation concerning such details as the dates of a suspension, the length of time that the teacher has during which to take a remedial program, or the details of a substance abuse rehabilitation program.

In the last **6 months** of **2012**, **25%** of consent resolutions were **finalized** in **4 months or less.**

In the last **6 months** of **2013**, **74%** of consent resolutions were **finalized** in **4 months or less.**

Delay in the consent resolution process has been reduced since we instituted the practice of drafting consent resolution agreements in full to initiate the process. This change has required the development of staff expertise and administrative resources within the Professional Conduct Unit in order to streamline the creation and flow of documentation and correspondence.

[HEARINGS]

While infrequent, hearings of disciplinary complaints by a three-person panel are a very important part of the discipline structure of the *Teachers Act*. Decisions by hearing panels provide an important indicator of the view likely taken by the informed public concerning teacher disciplinary matters. Hearings provide an opportunity for teachers to take disciplinary matters before a panel of their peers and other informed members of the public. Hearings are infrequent because most matters are resolved by consent resolution agreement – to a large extent on the basis of the guidance provided by the extensive reasons for judgment of past panels.

Process changes can reduce the delay inherent in the hearing process somewhat. However, the opportunities for streamlining the hearing process are limited. Counsel's calendars and the availability of members of hearing panels, particularly when the hearing involves multiple hearing dates, create scheduling challenges.

There have been eight hearings since the *Teachers Act* came into force: 1 hearing in 2012; 4 hearings in 2013; and 3 hearings in 2014.

FUNDING & THE TEACHER REGULATION BRANCH STRUCTURE

The Teacher Regulation Branch derives its funding from annual practice fees paid by holders of teaching certificates, and from certification fees paid by newly certified teachers. Annual practice fees under the BC College of Teachers were $90 per year until the 2011-2012 school year when they were increased to $120. When the *Teachers Act* came into effect, the annual fee was reduced to $80 for the 2012-2013 school year and remains at that level. Pursuant to the *Act*, the funds realized from the certification and practice fees are held in a special account and used for costs and expenses incurred by government in connection with the administration of the *Act*.

Under the *Act*, I am independent of government. However, because members of my staff are employees of the Ministry of Education, I am impacted by policies of the Ministry that affect the management efficiency of the Teacher Regulation Branch. As the holder of an office independent of government, I hesitate to express my opinion on matters that are properly the concern of the Branch as a whole. However, to the extent that structural considerations impact the operation of my office, I wish to set out some observations and recommendations directed to encouraging policy directions that would enhance the operation of the Professional Conduct Unit and my ability to fulfil my mandate.

I am conscious that ultimately, under the structure created by the *Teachers Act*, the funding for the work that I do is provided by the fees paid by the teachers of the province. Reflecting this fact in the day-to-day financing and management structure of the Teacher Regulation Branch will enhance the clarity and transparency intended by the *Act*.

REMEDIAL EDUCATION

In 2012-2013, in excess of 60% of the complaints and reports that came before me dealt with four types of misconduct: violations of professional boundaries; inability to manage conflict; poor classroom management skills; and cultural insensitivity. Included in the category of cultural insensitivity were instances of homophobic comments. One of the important aspects of conduct regulation is the imposition of remedial education requirements as a response to individual instances of misconduct.

I have been engaged in discussions with the Justice Institute of British Columbia with a view to having them design remedial courses in the areas of Professional Boundaries, Classroom Management and Managing Conflict that relate specifically to teaching. At present the only suitable resource available specifically directed to teaching situations is the professional boundaries course offered for some years now by the Teacher Regulation Branch. I have found this to be an excellent resource. However, the Branch is not likely to be able to continue to offer the course on the scale that is necessary. One of the key goals that I have set for the coming year is to have remedial courses available in each of these three areas through the Justice Institute to provide effective assistance to teachers whose misconduct in one of these areas has led to disciplinary action. I intend to address cultural and sensitivity training as well, although this is proving to be more of a challenge.

Instances of deficient classroom management skills, when they lead to violations of the Standards, are often an indicator of a fundamental problem with a teacher's skill set and may be addressed through an effective remedial education program. In those cases, the requirement of attendance at an effective classroom management course as part of a consent resolution agreement can be of great benefit.

The same is true in cases where disciplinary action has been necessitated by the inability of a teacher to effectively manage conflict with a student because of a lack of knowledge of the strategies available for de-escalating conflict situations. Disrespectful behaviour by students can be extremely stressful for a teacher who is the target of it when they do not have the tools necessary to deal with it in an effective manner.

Among the most troubling situations that I deal with arise from professional boundary violations. These situations are dangerous both to students and to teachers. To students: because the fallout from them can be extremely damaging emotionally. To teachers: when their conduct, even though not motivated by sexual intentions, is otherwise indistinguishable from grooming behaviour and can lead to cancellation of their certificate. These cases generally involve teachers who lose sight of the fact that their professional role is their role as a teacher not as a confidant and a friend no matter how needy the student appears to be. I constantly deal with circumstances in which a teacher has become a friend or a parent figure to a student who is troubled and beset by real problems in his or her life. Often the student feels he or she cannot turn to his or her parents for assistance in dealing with his or her problems. He or she is grateful for the interest shown by a teacher. These situations often end very badly. In some circumstances the teacher, either on his or her own, or because of peer pressure and advice, realizes that the relationship has gone too far and terminates it. This often leaves the student feeling abandoned and rejected. This dynamic can lead to emotional distress and drug and alcohol abuse on the part of the student or, in extreme cases false allegations against the teacher as a way of striking back.

Professional boundaries are there for a reason. Teachers should understand and be aware of them and conduct themselves very carefully in this very sensitive area.

STRATEGIC GOALS FOR 2014-2015

1. Continue to reduce delay in all processes with a particular emphasis on investigative delay.

2. Continue to cooperate with the Justice Institute of British Columbia to develop a remedial course resource in the areas of Professional Boundaries, Classroom Management and Conflict Resolution.

3. Identify training resources for cultural and gender sensitivity.

4. Cooperate with government to rationalize the funding structure for the Teacher Regulation Branch in order to promote both accountability and administrative efficiency.

5. Increase my focus on communicating the role of a professional regulator and the structure presently in place for regulating teacher conduct and competence. I want to communicate to parents in particular.

6. Continue to work with B.C. School Sports with respect to teacher-coaches and parent-coaches in school sports.

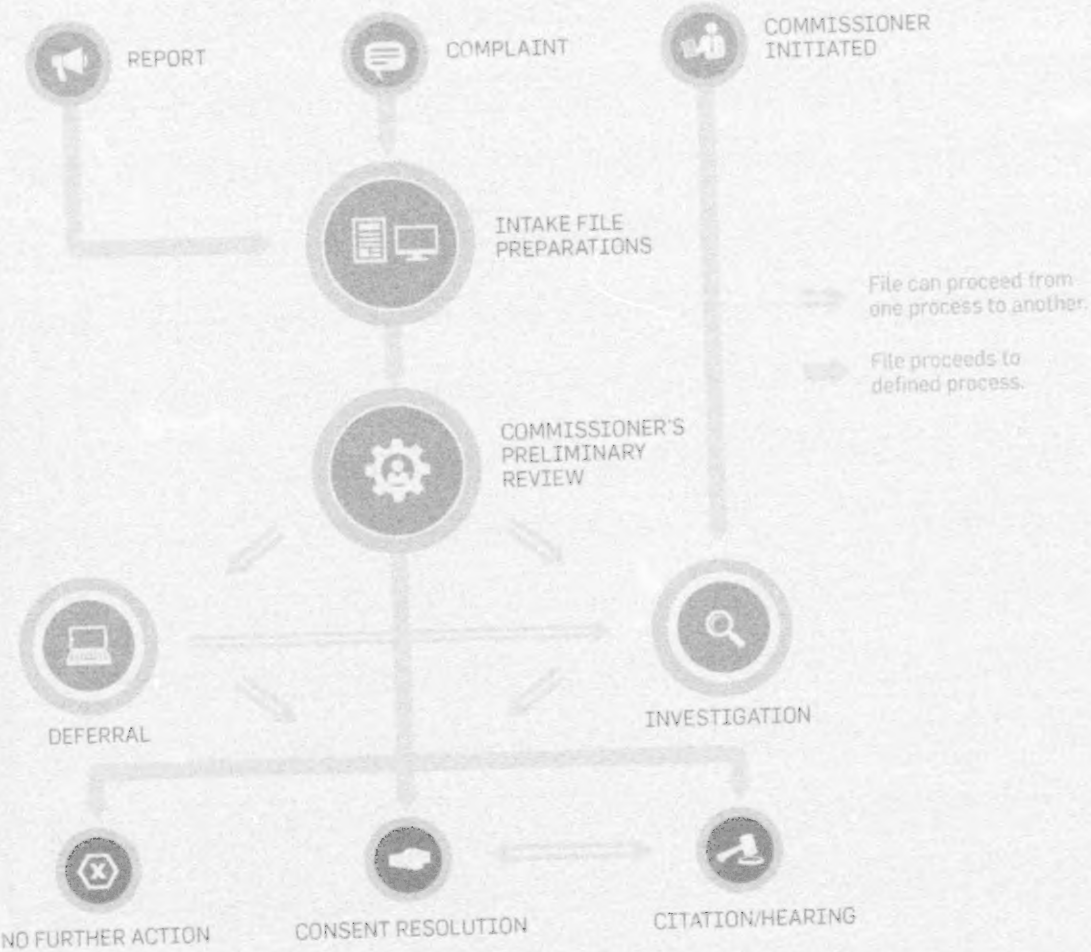
APPENDICES

[A. OVERVIEW OF THE DISCIPLINARY PROCESS]

The Commissioner, upon receiving a report or complaint file prepared by an intake officer, will conduct a preliminary review of the file and determine which, if any, disciplinary process is appropriate to address a complaint or report. Under the *Teachers Act*, the Commissioner has the following options available:

1. Take no further action (NFA);
2. Deferral;
3. Initiate an investigation;
4. Make or accept a proposal for a consent resolution agreement; or
5. Issue a citation, which leads to a hearing.

A file may proceed through the disciplinary process a number of different ways depending on the specifics of the case. While this visual provides an accurate depiction of the disciplinary process in place currently, this could change in the future as the Commissioner works to reduce and/or eliminate delay in administrative and adjudicative processes.



[B. DUTY TO REPORT]

Under the *Teachers Act*, the *School Act*, the *Independent School Act*, and the *Criminal Records Review Act*, teachers and employers are required to report or self-report any instance of misconduct or incompetence of a teacher even if discipline at the employment level has already been imposed. The duty to report to the regulatory level protects the safety of children within the public and independent school systems and ensures that teachers who fail to meet the Standards for competence and conduct will be held accountable.

Teachers

Under section 38 of the *Teachers Act*, a teacher must promptly provide to the Commissioner a written and signed report if he/she has reason to believe that another teacher has engaged in conduct that involves any of the following:

- Physical harm to a student
- Sexual abuse or sexual exploitation of a student
- Significant emotional harm to a student

Under section 17.9 of the *Criminal Records Review Act*, teachers are required to self-report promptly to the Director of Certification if they are criminally charged or convicted in relation to a "relevant offence" (an offence listed in Schedule 1 of the *Criminal Records Review Act*).

Employers

Under Section 16 of the *School Act* and section 7 of the *Independent School Act*, boards of education and independent school authorities have a duty to report the following to the Commissioner:

- A suspension or dismissal
- A resignation, if it is in the public interest to report the matter
- Discipline for misconduct involving:
  - Physical harm to a student or minor,
  - Sexual abuse or sexual exploitation of a student or minor, or
  - Significant emotional harm to a student or minor
- Conduct or competence considered to be in breach of the certification standards, if it is in the public interest to do so

[C. RESOURCES]

Resources for the public and education stakeholders

Applicable legislation

Teachers Act
Commissioner's Regulation
Commissioner's Rules

Standards for Educators in BC

Standards for the Education, Competence and Professional Conduct of Educators in BC
Independent School Teacher Conduct and Competence Standards
Understanding Your Duty to Report

Complaints

Making a Complaint brochure
Complaint Form

Contact Information

Commissioner for Teacher Regulation – to make comments
Email: CommissionerTeacherRegulation@gov.bc.ca
Intake area – to ask questions about making a complaint
Email: trb.intake@gov.bc.ca

To obtain a copy of these resources or to get more information on the work of the Commissioner visit:
www.bcteacherregulation.ca

COMMISSIONER FOR TEACHER REGULATION

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